

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3436/2dn
MDK:cmh:jf

January 19, 2000

Representative Handrick:

Please review this version very carefully to make sure that it achieves your intent. In particular, please note the following:

1. I made some changes to the wording of the definition of "occupation" that was supplied in order to make it grammatically consistent with the definition of "occupational therapy".

2. This version specifically allows, but does not require, the affiliated credentialing board to promulgate rules defining scope of practice. This specific power is in addition to the affiliated credentialing board's general power, set forth in s. 15.085 (5) (b), stats., to promulgate rules "for its own guidance and for the guidance of the trade or profession to which it pertains". This general power is probably sufficient for the affiliated credentialing board to promulgate rules on scope of practice. Note that 2 other boards in DORL have relied on such general power in promulgating rules defining scope of practice. The medical examining board has relied on its general power under s. 15.08, stats., to promulgate rules defining the scope of practice of physician assistants. See ss. Med. 8.01 and 8.07 (1), Wis. Adm. Code. Likewise, the chiropractic examining board has relied on s. 15.08 (5) (b), stats., to promulgate rules that define what is outside the scope of practice of chiropractic. See ss. Chir. 4.01 and 4.05, Wis. Adm. Code.

3. On a related point, note that there are only a few instances in the statutes in which a board in DORL is specifically required or allowed to promulgate rules on scope of practice. See ss. 441.15 (3) (c), stats., (requiring the board of nursing to promulgate rules on the scope of practice of nurse-midwifery), 441.16 (3) (b), stats., (requiring the board of nursing to promulgate rules defining the scope of practice within which advanced practice nurses may issue prescription orders) and 446.02 (10), stats., (requiring the chiropractic examining board and the physical therapists affiliated credentialing board to jointly promulgate rules on the circumstances in which a chiropractor can claim to render physical therapy services within the scope of practice of chiropractic). It could be argued that, in these statutes, the legislature was concerned with drawing lines between the scopes of practices of different professions (i.e., registered nurses versus nurse-midwives, advanced practice nurses versus other professions that issue prescription orders and physical therapists versus chiropractors). Arguably, the legislature used these statutes to put limits on a board's general power to promulgate rules for the guidance of the profession that it regulates.

Therefore, these statutes are not inconsistent with my point in item 2 that the affiliated credentialing board could probably rely on its general power under s. 15.085 (5) (b), stats., to promulgate rules on scope of practice.

If you have any questions about this version, please contact me. I am in the process of preparing a “cut and paste” version of new subch. VII of ch. 448 that will more easily show the changes to current law made by this version. I will provide you with a copy of the “cut and paste” version as soon as it is available.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: Mark.Kunkel@legis.state.wi.us